

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MUNTHER MAHMOUD,

Plaintiff,

– against –

AKIMA GLOBAL SERVICES, LLC,
UNITED STATES OF AMERICA,
MICHAEL T. PHILLIPS, TODD TRYON,
DETENTION CENTER OFFICER,
CAPTAIN VOHWINKEL, DETENTION
OFFICER CAPTAIN TORRES,
DETENTION OFFICER LIEUTENANT
O’NEIL, DETENTION OFFICER
LIEUTENANT SMITH, DETENTION
OFFICER LIEUTENANT HERITAGE,
DETENTION OFFICER LIEUTENANT
SPIOTTA, DETENTION OFFICER
LIEUTENANT KOWALSKI,
DETENTION OFFICER LIEUTENANT
SCIMIA, BUFFALO FEDERAL
DETENTION FACILITY, HEALTH
SERVICES DIRECTOR JOHN/JANE
DOE, JOHN/JANE DOE PHYSICIANS,
JOHN/JANE DOE PHYSICIAN
ASSISTANTS, JOHN/JANE DOE
NURSES, DETENTION OFFICERS
JOHN DOE 1-5,

Defendants.

NOT FOR PUBLICATION

1:21-cv-13 (ERK) (JRC)

ORDER

I assume familiarity with my order granting Defendant Akima Global Services, LLC's ("Akima") unopposed motion for summary judgment. *See Mahmoud v. Akima Glob. Servs., LLC*, No. 1:21-cv-13, 2022 WL 160317 (E.D.N.Y. Jan. 18, 2022). Akima had moved concurrently for Rule 11 sanctions against Plaintiff's attorneys as well as Plaintiff as the represented party. The record clearly warranted sanctions against Plaintiff's attorneys, who, as Akima argued in its motion, were "accountable for the baseless, wasteful, and untenable continuation of *Mahmoud I* and commencement and continuation of this action." ECF No. 23-1 at 16. More specifically, Plaintiff's counsel "undertook the intentional steps of drafting and filing [this] action . . . after having been made conspicuously aware that their client's claims are fraudulent and frivolous." *Id.* at 13. Indeed, as of the date the filing of the motions for summary judgment and sanctions, the firm representing Plaintiff "ha[d] yet to dismiss the claims in the Verified Complaint or to withdraw from [the] representation." *Id.* Moreover, Akima accused Plaintiff's counsel of contacting represented parties under circumstances which "evinced an intention to harass while evading the reality of the Security Footage directly refuting Plaintiff's claims." *Id.* at 16.

Notwithstanding the alleged misconduct of Plaintiff's counsel, Akima has withdrawn its application for sanctions against them. *See* ECF No. 42. This leaves

the motion for sanctions against Plaintiff as the represented party. The motion is denied. While Plaintiff's conduct is certainly not without fault, he was represented by counsel who were familiar with the evidence (or lack thereof) supporting the allegations in the complaint and presumably did not advise Plaintiff against proceeding. Moreover, after the motion for summary judgment was filed and after his attorneys withdrew, Plaintiff did not oppose that motion after it was served on him nor did he appeal the decision granting the motion. "[F]ining a represented party is a very severe sanction that should be imposed with sensitivity to the facts of the case and to the party's financial situation." *United States v. Milam*, 855 F.2d 739, 743 (11th Cir. 1988).

While I deny the motion for sanctions, I do admonish Plaintiff to refrain from bringing any additional lawsuit based on the facts alleged in his complaint and warn him that, should he do so, he will likely face sanctions that will include monetary penalties. *See Falso v. Gates Chili Cent. Sch. Dist.*, 408 F. App'x 494, 497 (2d Cir. 2011) (approving of such a "cautionary instruction").

SO ORDERED.

Edward R. Korman

Edward R. Korman
United States District Judge

Brooklyn, New York
March 30, 2022